

SUMMARY ANALYSIS OF AMENDED BILL

Author: Beall Analyst: Jahna Alvarado Bill Number: AB 79
 Related Bills: See Prior Analysis Telephone: 845-5683 Amended Date: May 31, 2011
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: University of California Technology Acceleration Fund Contributions Credit

SUMMARY

This bill would create an income and franchise tax credit for contributions made to a University of California Technology Commercialization Acceleration Fund (UCTCAF).

This bill would also make changes to the Education Code. This analysis is limited to the changes that would impact the department.

RECOMMENDATION AND SUPPORTING ARGUMENTS

No position.

PURPOSE OF THE BILL

It appears that the purpose of the bill is to facilitate the commercialization of university research and development by allowing a tax credit for contributions to a UCTCAF.

SUMMARY OF AMENDMENTS

The May 31, 2011, amendments would, under the Education Code, rename the University Venture Development Fund as the UCTCAF, and would modify the purpose of a UCTCAF, the allowable use of funds deposited into a UCTCAF, and the definition of several terms.

Except for the "This Bill" section, the remainder of the department's analysis of the bill as introduced January 3, 2011, still applies. The following implementation considerations, technical considerations, and policy concerns still apply and are included below for convenience.

EFFECTIVE/OPERATIVE DATE

The UCTCAF credit (the credit) would be effective January 1, 2012, and specifically operative for taxable years beginning on or after January 1, 2011.

Board Position:

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Legislative Director

Date

Anne Maitland

9/30/11

ANALYSIS

THIS BILL

This bill would, under the Education Code, authorize the University of California to create a UCTCAF for each university campus and for the university system for the deposit of contributions made for the purpose of facilitating the commercialization of university research and development. The Regents of the University of California (Regents) would be requested to notify the Franchise Tax Board (FTB) of the establishment of each fund and to provide a letter to each contributor certifying the contribution and its use for qualified research expenses and direct expenses of administering the fund.

This bill would, under the Education Code, modify the definition of the terms, “qualified research expenses,” “qualified services,” and “qualified research” for purposes of restricting how the money in the UCTCAF may be used.

This bill would, under the Revenue and Taxation Code, for taxable years beginning on or after January 1, 2011, provide a franchise or income tax credit in an amount equal to 50 percent of the amount contributed by a taxpayer during the taxable year to any UCTCAF, as certified by the Regents.

A taxpayer would be required to provide the certification letter to the FTB upon request.

The maximum aggregate credit available to all taxpayers would be limited to \$200 million.

The FTB would be required to allow the credit on a first-to-file basis until the maximum aggregate credit was reached.

This bill would allow any unused credit to be carried over until exhausted.

A contribution that was the basis for any other credit or deduction reported by the taxpayer would be ineligible for the credit.

IMPLEMENTATION CONSIDERATIONS

Department staff have identified the following implementation considerations. Additional concerns may be identified as the bill moves through the legislative process. Department staff is available to work with the author’s office to resolve these and other concerns that may be identified.

This bill fails to limit the amount of contributions that could be certified by the Regents. This could result in reported credits that exceed the aggregate limit specified in the Revenue and Taxation Code. To reduce taxpayer uncertainty, the author may wish to amend this bill to limit the amount of contributions that could be certified to the amount that would be equal to the aggregate limitation.

This bill uses terms that are undefined, i.e., “maximum amount of credit available,” and “first-to-file basis.” The absence of definitions to clarify these terms could lead to disputes with taxpayers and would complicate the administration of this credit.

Under the terms of this bill, it appears that the credit could be reported on either an originally filed return or an amended return. Additionally, it appears that a taxpayer would be allowed to file an amended return, as allowed by statute, to reverse the credit. As a result, the aggregate use of the credit could increase as original returns are filed, and could either increase or decrease as amended returns are received. It is unclear how credits denied because the aggregate credit limit had been reached would be tracked and whether previously denied credits would be allowed in the event that the aggregate credit amount allowed subsequently drops below the limit.

Because this bill is silent on the applicability of the underpayment penalties, a taxpayer denied the credit because the aggregate credit limit had been reached would be subject to these penalties. If this is contrary to the author’s intent, this bill should be amended.

For speed and ease of administration and taxpayer certainty the author may wish to consider amending this bill to:

- Limit the credit to amounts claimed on a timely original return;
- Exclude the FTB’s determinations from any administrative or judicial review process. For example, the determination of “first-to-file;”
- Specify that a disallowance of the credit shall be treated as a math error;
- Specify that the FTB may prescribe rules, guidelines, or procedures necessary and appropriate; and
- Exclude the rules, guidelines, or procedures regulations from the Administrative Procedures Act.

TECHNICAL CONSIDERATIONS

On page 4, line 23, and page 5, line 19, strikeout the phrase “maximum aggregate amount of credit” and insert the phrase “maximum aggregate credit amount” for consistent terminology when referring to the \$200 million cap on the credit.

SUPPORT/OPPOSITION

Support: None provided to the FTB.

Opposition: None provided to the FTB.

POLICY CONCERNS

This bill lacks a sunset date. Sunset dates generally are provided to allow periodic review of the effectiveness of a credit by the Legislature.

This bill does not limit the number of years for the carryover period. The department would be required to retain the carryover on the tax forms indefinitely because an unlimited credit carryover period is allowed. Recent credits have been enacted with a carryover period limitation since experience shows credits typically are exhausted within eight years of being earned.

LEGISLATIVE STAFF CONTACT

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